Supreme Court, U.S.
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No. 97-1138

In The

Supreme Court of the United States

October Term, 1997

EDWARD COMENOUT, JR. and JOHN and JANE DOES, 1-10 INCLUSIVE,

Petitioners,

v.

STATE OF WASHINGTON, DEPARTMENT OF COMMUNITY DEVELOPMENT and CITY OF PUYALLUP, A MUNICIPAL CORPORATION,

Respondents.

On Petition For Writ Of Certiorari To The Washington State Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

50-PP

QUESTIONS PRESENTED

1. Whether this Court should accept review of a case where the primary conflict asserted by petitioner arises between the Washington State Supreme Court and the Washington State Appellate Court, and petitioner does not otherwise claim conflict between federal and state courts or intra state.

2. Should this Court accept review of a case which includes analysis of Indian trust property attributes and jurisdiction of Washington State over criminal acts on such land where the case below followed well-settled precedents of the federal courts, including this Court.

LIST OF PARTIES

The respondent, City of Puyallup, joins in petitioners' Statement of Parties to these proceedings.

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STATEMENT OF THE CASE

This case involves the application of Washington State laws governing fireworks to a parcel of land in the City of Puyallup, Washington. Petitioner omits certain facts about the nature of the parcel of land at issue.

Petitioner, Edward Comenout, is one of 11 beneficial owners of a piece of property. App. p. 15. The property is held in trust by the United States for the 11 beneficial owners. This is not tribal trust property. It is not allotted property. App. p. 1. The parcel has never been used by any tribe. It has not even been used exclusively by Indians. Non-Indians have leased it for a used car lot. *Mattheson v. Kinnear*, 393 F.Supp. 1025 (W.D. Wash. 1975).[1]

Edward Comenout is the only petitioner who claims membership in a recognized tribe, the Quinaults. His brother, Robert Comenout, claims membership in the Snoqualmie Indian Tribe, which is not recognized. App. p. 2; *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 53 Fed. Reg. 52892-02 (1988). The record does not indicate whether any of the other 11 owners claim tribal rights or not.

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[1] *Mattheson* represents the beginning of a 20-year struggle by the petitioner to avoid state jurisdiction over this parcel of property. In each case the petitioner has sought refuge in his status as a descendant of Indians, and at each stage he has lost. *Comenout v. Washington*, 727 F.2d 574 (9th Cir. 1983); *Comenout v. City of Puyallup*, Western District of Washington, CV-94-5324 RJB (1994); *Comenout v. City of Puyallup*, 9th Cir. Ct. of App. No. 94-35904 (1995); *State v. Comenout*, Western District of Washington, No. C92-5367 (1992), *appeal dismissed*, 9th Cir. Ct. of App. No. 92-36830 and No. 92-36832 (1992).

The property is located within the City of Puyallup. Beginning in 1992, the petitioner was the subject of a state court injunction preventing him from selling illegal fireworks. App. p. 3. In 1994, the petitioner sold illegal fireworks to school children in violation of the injunction. App. p. 6, App. p. 8. Petitioner was found in contempt. App. p. 10. Petitioner does not challenge the operative facts of this case, only the jurisdiction of the state court to enjoin these acts.

REASONS FOR DENYING THE PETITION

A. Petitioner fails to show a conflict between state courts or between Washington State and the federal courts.

Petitioner's Writ is premised upon a claim that two cases of the Washington Supreme Court conflict. Petitioner's Writ, p. 12. A conflict between two decisions of the same court of last resort does not present an appropriate reason for review in this Court. Rule 10(b). A claim that a state intermediate Court of Appeals relied upon the wrong one of two decisions of the state court of last resort similarly does not present a recognized basis for granting a writ. *Id.*

B. The federal questions decided below follow well-established precedent.

An unarticulated ground for this petition is that the case below addressed federal law and did so incorrectly. At various stages of this litigation, the petitioner has claimed his property is "Indian country" or an "Indian

reservation." If so, the petitioner reasons, the state and its municipal subdivisions have no jurisdiction. Indeed, the present petition is premised upon the unsupported syllogism that since the petitioner, Edward Comenout, is a member of the Quinault Tribe, and the Quinault Tribe is party to a federal treaty, this parcel of land is an Indian reservation. Petition, pps. 11-12.

The claim by petitioner that the parcel of property is a sovereign Indian Nation has been decided against the petitioner by following well-established precedent, some coming from this Court, and all utterly ignored in the petition.

Following this Court's decision in *Donnelly v. United States*, 228 U.S. 243, 57 L.Ed. 820, 33 S.Ct. 449 (1913), Congress codified the definition of an Indian reservation in the Indian country statute, 18 U.S.C. § 1151. By its express terms, Indian country is limited to reservations [Section 1151(a)]; dependent Indian communities [Section 1151(b)]; and all Indian allotments [Section 1151(c)].

This land is not part of a reservation. Nor is the land properly characterized as a dependent Indian community under any analysis of its functional qualities as a de facto reservation. *Alyeska Pipeline Service Co. v. Kluti Kaah Native Village of Copper Center*, 101 F.3d 610, 612-613 (9th Cir. 1996); *Blatchford v. Sullivan*, 904 F.2d 542 (10th Cir. 1990), *cert. denied*, 111 S.Ct. 699, 498 U.S. 1035, 112 L.Ed.2d 689 (1991). Finally, this land is not allotted. App. p. 1.[2]

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[2] Allotment is a term of art. Cohen, *Handbook of Federal Indian Law*, p. 615 (1982). It defines the process of allotting tribal

Tribal sovereign immunity does not extend to crimes committed by Indians on land outside of the sovereign reservation. *Puyallup Tribe v. Washington Game Dept.*, 433 U.S. 165, 171, 53 L.Ed.2d 667, 97 S.Ct. 2616 (1976).

CONCLUSION

Petitioner has advanced no compelling reason for this Court to grant the writ. There is no conflict between decisions. There is no important federal question decided with debatable reason by the state court. For these reasons, the petition should be denied.

Respectfully submitted,

ANDREW G. COOLEY
Counsel of Record
Attorneys for Respondent
City of Puyallup
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lands by conveyance to the United States in trust for the tribal beneficiaries. *Id.* at 616. That is not the case here. Indeed, even the Washington state case relied upon by the petitioner, *Snohomish Cy. v. Seattle Disposal Co.*, 70 Wn.2d 668, 425 P.2d 22 (1967), addressed the significance of allotted land held in trust for a particular tribal nation. *Id.* at 671, 425 P.2d at 25.

App. 1

APPENDIX

TITLE STATUS REPORT

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

ALLOTMENT OR TRACT NUMBER	RESERVATION CODE	RESERVATION NAME	NAME OF ORIGINAL ALLOTTEE	PAGE NO.
1027	130	WESTERN WASHINGTON PUBLIC DOMAIN	PURCHASED LAND - NOT ALLOTTED	1

ALLOTMENT AND AMENDATORY ACTS	ALLOTMENT SCHEDULE APPROVED	PATENT		NUMBER	DATE
		TRUST	---		
		RESTRICTED FEE	---		

DESCRIPTION OF REALTY INTERESTS CURRENTLY UNDER JURISDICTION OF B I A

SECTION	TOWNSHIP	RANGE	MER	COUNTY	STATE	NE	NW	SW	SE	ACRES	REMARKS
21	20N	4E	WM	PIERCE	WASH			O		1.78	PT L1+2 GEORGE O KELLYS 2ND SUBD OF DLC 39
										1.78	TOTAL

LEGAL (NARRATIVE) DESCRIPTION: Those portions of the following described tract of land lying south of the northerly line of Washington State Primary Highway No. 5 in section 21, Township 20 North, Range 4 East, Willamette Meridian, Pierce County, Washington; Commencing at a point 265.14 feet north of the southeast corner of Lot 2 as the same is known and designated upon a certain plat entitled "George O. Kelly's 2nd Subdivision of part of the B. F. Wright D. L. C. No. 39, in sections 20, 21, 28, 29, Township 20 North, Range 4 East, Willamette Meridian" filed for record in the office of the Auditor of Pierce County, July 10th, 1903; thence running west 356.33 feet to a stake; thence north 345.47 feet to a stake on the bank of the Puyallup River; thence easterly along the meander line of said River 383.07 feet to the east line of Lot 1 of said plat; thence south along the east line of said subdivision 204.76 feet to the point of beginning, containing 1.78 acres, more or less.

BEST AVAILABLE COPY

THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDWARD COMENOUT JR. and ROBERT COMENOUT SR. d/b/a/ INDIAN COUNTRY STORE, Plaintiff's, v. CITY OF PUYALLUP, A MUNICIPAL CORPORATION, defendant.	NO. C94-5324 RJB AFFIDAVIT OF ROBERT COMENOUT SR.

STATE OF WASHINGTON)
) SS
County of Snohomish)

COMES NOW ROBERT R. COMENOUT SR., Who first being sworn on oath, DEPOSES AND SAYS THAT;

I am Robert R. Comenout Sr., one of the Defendants herein, currently residing on the Tulalip Indian Reservation, who claim to be successors in interest to the Snoqualmie Tribe, I am aboriginal S'DOK'WAL'BIX, present day Snoqualmie, I am currently enrolled in the SNOQUALMIE TRIBAL ORGANIZATION, ROLL NO. 245, THE SNOQUALMIE TRIBE, ROLL NO. 245, and THE

TULALIP TRIBES OF WASHINGTON, TRIBAL ROLL NO.# 2597.

I have been in Tribal Relations throughout my life-time, or since March 19, 1931, and have recieved [sic] tribal benefits since that time. Indian health, I was in Cushman Indian Hospital in 1939, Indian Education, Chemawa Indian School 1947-1948.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

THE STATE OF WASHINGTON; DEPARTMENT OF COMMUNITY DEVELOPMENT; and THE CITY OF PUYALLUP, Plaintiffs, v. EDWARD COMENOUT, JR.; ROBERT COMENOUT, SR.; and JOHN AND JANE DOES 1-9 inclusive, Defendants.	NO. 92-2-06381-1 ORDER GRANTING DECLARATORY AND INJUNCTIVE RELIEF

This matter came before the Court the 22nd day of June, 1993, on Plaintiff's motion for declaratory and injunctive relief. The Plaintiffs appeared by and through their attorneys of record and Defendants appeared pro se.

The Court reviewed the files and the records, the affidavits of the parties, and considered the oral argument of the parties. The following documents were offered and considered at the time of hearing: Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Declaratory Relief; Affidavit of Richard F. Carman; Letter dated September 12, 1984 addressed to Robert R Comenout, Sr., from Bureau of Indian Affairs; and Memorandum from Stanley Speaks, Area Director, Portland Branch of Real Property Management.

Based on the files, records, the foregoing documents, and the arguments of the parties the Court rendered its oral decision and made following conclusions of law:

1. Commercial fireworks activities conducted on the property located at 908 River Road East, Puyallup, Pierce County, Washington, at the business known as the Indian Country Store are subject to ch. 70.77 RCW, "State Fireworks Law," and ch. 16.20 of the Puyallup Municipal Code, "Fireworks."

2. The United States District Court ruling that the State of Washington has jurisdiction to enforce state laws as to activities conducted on this parcel is controlling. *Matheson v. Kinnear*, 393 F. Supp. 1025 (W.D. Wash. 1975).

Consistent with its oral decision and conclusions of law, the Court enters judgment as follows:

1. That in this and future years, Edward Comenout, Jr., and Robert Comenout, Sr., Defendants herein, their agents, servants and employees and those acting in concert with them are prohibited and permanently enjoined from engaging in any acts violating ch. 70.77 RCW, "State Fireworks Law," and ch. 16.20 Puyallup Municipal Code, "Fireworks," in their commercial activities with respect to common and special fireworks on the subject property.

No bond is required, pursuant to RCW 4.92.080.

DONE IN OPEN COURT THIS 23rd day of June, 1993.

/s/ J. Kelley Arnold
HONORABLE
J. KELLEY ARNOLD
Judge of the Superior Court

Presented by:
CITY OF PUYALLUP

/s/ Robin S. Jenkinson
ROBIN S. JENKINSON WSBA No. 10853
City Attorney
Attorney for Plaintiff
City of Puyallup

/s/ Derek A. Mann
DEREK A. MANN, WSBA No. 20194
Assistant Attorney General
Attorney for Plaintiffs
State of Washington and Department
of Community Development

APPROVED AS TO FORM AND
NOTICE OF PRESENTMENT WAIVED:

_____
EDWARD COMENOUT, JR.

_____
ROBERT COMENOUT, SR.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

THE CITY OF PUYALLUP, a municipal corporation, Plaintiff, vs. EDWARD COMENOUT, JR., AND JOHN AND JANE DOES 1 - 10, INCLUSIVE, Defendants.	)	No. 92-2-06381-1 AFFIDAVIT OF RICHARD F. CARMAN

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss:

RICHARD F. CARMAN, being first duly sworn on oath, deposes and says:

1. I am the Fire Marshal for the City of Puyallup. My duties include the investigation of fires of suspicious origin and investigations of incidents of possession of illegal fireworks.

2. On June 2, 1994 at approximately 0950 hours, I responded to a request to investigate an incident at Maplewood Elementary School involving possession of illegal fireworks by juveniles.

3. As part of my investigation I interviewed Susan Hulbert, Principal of Maplewood Elementary School. Ms. Hulbert stated that one of her twelve-year old male students, had arrived at school on June 2, 1994 with "bottle rockets" in his pack.

4. Upon further investigation I discovered that on June 1, 1994, three juveniles rode their bikes to the Indian Country Store located at 908 River Road, Puyallup, Washington. Two of the juveniles entered the store and purchased a quantity of "bottle rockets".

5. After purchasing the "bottle rockets" they rode their bikes to DeCoursey Park in Puyallup and discharged a number of "bottle rockets" at the park.

6. On June 2, 1994 at Maplewood Elementary School the pack of the subject juvenile was kicked by another student and five "bottle rockets" fell from the pack. The "bottle rockets" were spotted by the teacher who in turn notified the Principal who notified the Puyallup Fire Department.

7. In a separate incident, on June 6, 1994 at approximately 1600 hours I personally observed the ignition of firecrackers in the middle of a residential street located at SW 13th Street and 7th Avenue, Puyallup, Washington.

8. Upon further investigation it was discovered that one of the juveniles was in possession of a pack of skyrockets containing 12 rockets. The juvenile stated that he had purchased the fireworks at the Indian Country Store on June 1, 1994.

Dated this 8th day of June, 1994.

/s/ Richard F. Carman
RICHARD F. CARMAN

Subscribed and sworn to before me this 8th day of June, 1994.

/s/ Illegible
Notary Public in and for the
State of Washington,
residing in Tacoma
Commission expires 5/1/95

SUPERIOR COURT OF THE STATE WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON; DEPARTMENT OF COMMUNITY DEVELOPMENT; and THE CITY OF PUYALLUP, Plaintiffs, vs. EDWARD COMENOUT, JR.; ROBERT COMENOUT, SR. and JOHN AND JANE DOES 1-9 INCLUSIVE, Defendants.	No. 92-2-06381-1 AFFIDAVIT OF RICHARD F. CARMAN

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

RICHARD F. CARMAN, being first duly sworn on oath, deposes and says:

1. I am a Fire Marshal for the City of Puyallup. My duties include the investigation of fires of suspicious origin.

2. On May 25, 1993 at approximately 9:30 p.m., I responded to a request to investigate the cause of a fire in a tree in the front yard of 405 10th Avenue N.E., Puyallup.

3. As part of my investigation I interviewed a juvenile suspect. The thirteen-year-old male stated that he

had gone to the Indian Country Store with a friend between 4:30 and 5:00 p.m. on May 25, 1993. The youth stated that he had asked for a package of fireworks which contained numerous bottle rockets, firecrackers and other assorted fireworks. The youth stated that he was waited on in the Indian Country Store by an individual whose only comment was, "Will that be all?"

4. After making the purchase the juvenile stated that he returned home and later that evening ignited and discharged all of the firecrackers contained in the package. The juvenile further stated that shortly before 9:30 p.m. on May 25, 1993, he ignited a sky rocket which skipped along the ground and ignited the tree in the yard at 405 10th Avenue N.E.

5. As part of my investigation, I next contacted and interviewed the friend identified by the juvenile suspect. The second individual was a sixth grade student who confirmed that he had accompanied the juvenile suspect to the Indian Country Store at 9th Street and River Road N.W. where the subject fireworks were purchased.

Dated this 21st day of June, 1993.

/s/ Richard F. Carman
RICHARD F. CARMAN

SUBSCRIBED and sworn to before me this 21st day of June, 1993.

/s/ Illegible
NOTARY PUBLIC in and for
the State of Washington
residing at Puyallup.
Commission expires
May 1, 1995

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

THE STATE OF WASHINGTON, DEPARTMENT OF COMMUNITY DEVELOPMENT, and THE CITY OF PUYALLUP, a municipal corporation, Plaintiffs, v. EDWARD COMENOUT JR., AND JOHN AND JANE DOES, 1-10, INCLUSIVE, Defendants.	92-206381-1 ORDER RE CONTEMPT AGAINST EDWARD EDWARD COMENOUT, JR. Next Hearing Date: Clerk's Action Required

THIS MATTER having come on regularly for hearing before the above-entitled Court upon the Motion and Affidavit of Plaintiff, City of Puyallup, by and through Robin Jenkinson, City Attorney for Puyallup, for an Order to Show Cause Re Contempt the Court having reviewed the records and files herein, heard the oral argument of counsel, and being fully advised in the premises, now therefore, the Court finds:

I. FINDINGS

THIS COURT FINDS:

1.1 COMPLIANCE WITH COURT ORDER.

Defendant Edward Comenout, Jr. failed to comply with a lawful order of the Court dated June 23, 1993.

1.2 NATURE OF ORDER.

The order is related to compliance with ch. 70.77, "State Fireworks Law", and Puyallup Municipal Code Chapter 16.20, "Fireworks".

1.3 HOW THE ORDER WAS VIOLATED.

This order was violated by the Defendant's engaging in acts in violation of ch. 70.77 RCW, "State Fireworks Law", and ch. 16.20 of the Puyallup Municipal Code, "Fireworks", in Defendant's commercial activities with respect to special and fireworks on the subject property.

1.4 PAST ABILITY TO COMPLY WITH ORDER.

Defendant is one of the equitable owners of the subject property and the one of the owners of the business known as the Indian Country Store. Defendant had the ability to comply with the order, but did not do so.

1.5 PRESENT ABILITY AND WILLINGNESS TO COMPLY WITH ORDER.

Defendant is in control of the premises and business and therefore has the ability to comply.

II. ORDER AND JUDGMENT

IT IS HEREBY ORDERED:

2.1 Defendant Edward Comenout, Jr. is guilty of contempt for failing to comply with this Court's order of June 23, 1993.

2.2 SANCTIONS.

Sanctions are reserved on the condition of compliance with the provisions of paragraph 2.3 below.

2.3 CONDITIONS FOR PURGING THE CONTEMPT.

The contemnor may purge the contempt as follows:
He may purge the contempt by compliance with order of June 23, 1993 beginning July 1, 1994.

2.4 REVIEW DATE

Defendant Edward Comenout, Jr. shall return to this Court and the Court shall review this matter on 7/29, 1994, at 11:00 a.m. in Room 217A.

OTHER: FURTHER SERIES OF REVIEWS SHALL BE SET CONTINUALLY AS DEEMED NECESSARY TO COERCE COMPLIANCE.

OTHER: YOUR FAILURE TO APPEAR AS SET FORTH AT THE TIME, DATE AND PLACE OF A REVIEW WILL CAUSE THE COURT TO ISSUE A BENCH WARRANT FOR YOUR APPREHENSION AND CONFINEMENT IN JAIL UNTIL SUCH TIME AS THE MATTER CAN BE HEARD.

DONE IN OPEN COURT this 1st day of July, 1994.

/s/ J. Kelley Arnold
THE HONORABLE
J. KELLEY ARNOLD
Judge of the Superior Court

Presented by:

CITY OF PUYALLUP

/s/ Robin Jenkinson
Robin Jenkinson, City Attorney
WSBA No. 10853
(206) 841-5525
Attorney for Plaintiff City of Puyallup

Approved for entry:
Notice of presentation waived:

_____

_____

UNITED STATES GOVERNMENT

memorandum

Portland Area Director
Branch of Real Estate Services

Review and Response – Jurisdiction of Fireworks Sale on Off-Reservation Restricted Fee Property

Office of the Regional Solicitor
Attention: Colleen A. Kelley

> Mr. Robert R. Comenout, Sr., whose mother and brother own the property involved herein, has requested assistance from the Bureau of Indian Affairs regarding the jurisdiction of the City of Puyallup and the State of Washington, as to the control of the sale of fireworks on purchased restricted fee land. Various activities on the property by Mr. Edward Comenout, Jr., owner of an undivided 1/2 interest in the purchased property, and/or his brother, have been frequently at odds with the City of Puyallup, Pierce county, and the State of Washington as to jurisdiction and enforcement of those certain endeavors, and jurisdictional questions are apparently anticipated through the sale of fireworks again as we approach July 4th.

The subject parcel, also known as 908 River Road, Puyallup, WA, was purchased by Edward Comenout, a member of the Quinault Tribe, utilizing funds verified as trust funds by the Superintendent, Taholah Indian Agency, (and which action indicates the authorization to acquire title in a restricted status), on September 13, 1926. The property is within the City of Puyallup and outside of the boundaries of the Puyallup Reservation.

In *State of Washington v. Edward Comenout, Jr.* Superior Court of the State of Washington for Pierce County, No. 92 2 06381, June 30, 1992, Memorandum of Points and Authorities in Support of Motion for Temporary Restraining Order, the State of Washington stated that the property at issue has been the subject to frequent previous litigation in state and federal court, *Comenout v. Washington.* Although the property is "held in trust by the United States", state jurisdiction has previously been established. Distinguishing this property from land within reservations, the United States District Court has ruled that the State of Washington has jurisdiction to enforce state laws as to activities conducted on this parcel. *Matheson* [sic] *v. Kinnear,* 393 F. Suppl. 1025, 1027-29 (W.D. Wash. 1975). The State goes on to distinguish between "common" and "special" fireworks which are permitted pursuant to state Fireworks Law and codified in RCW 70.77, both of which were apparently being sold by Mr. Comenout in 1992. There are restrictions (to protect the publics' health, safety, and property) against the sale to the public on certain "common" fireworks, and all "special" fireworks are sold only for exhibition or display. Mr. Comenout has not secured licenses (from anyone) for the sale of either types of fireworks and has previously argued that the State, County, and City lack jurisdiction over the premises. It appears that Mr. Comenout has attempted to utilize the question of jurisdiction to his advantage and convenience at times.

In a response to a Congressional inquiry in 1984, regarding a Notice of Hearing by the City of Puyallup as to requirements for connecting to sanitary sewers, the Portland Area Office advised the Central Office that 25 CFR

1.4(a) provides that the laws, ordinances, codes, regulations or rules of a state or subdivision, which control the use of development of land, shall not be applicable to Indian trust or restricted land. However, Department regulations provide that the Secretary of the Interior or his authorized representative may, in specific cases or in specific geographic areas, adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, regulations, or rules as he shall determine to be in the best interest of the Indian owner or owners. No action to address or adopt such matters on this property has been made by the Secretary. Central Office was advised that the Comenouts should be encouraged to seek legal counsel to represent them in hearings with the City of Puyallup if they (Comenouts) did not feel they would derive any benefits from such city services.

Central Office basically provided the same response to Mr. Robert Comenout, Sr., on September 12, 1984. However, Central Office did state that the sanitary sewer system is an environmental matter under the jurisdiction of the Indian Health Service, and a copy of the inquiry was forwarded to the Indian Health Service for an investigation of the health safeguards and the sewer problem, and requested to respond directly to Mr. Comenout.

The reference to the utilization of trust funds is mentioned hereinabove because the deed cites no statutory authority for the acquisition. However, the Superintendent's Certificate provides as follows: " . . . do hereby certify that the consideration for the within described *real property is money held in trust by the UNITED STATES OF AMERICA for the benefit of the grantee, said real property being purchased for a home.*" It would appear that while the

Bureau of Indian Affairs has dealt with the use and status of this property based on specific issues that arose, that the consideration for the expenditure of trust funds was justified for a single purpose, namely, a home and for whatever constitutes a "home". It would also appear that a business or other use for whatever purpose, for other than a home would be contrary to the consideration extended in the "approval" of the utilization of the funds in the acquisition by the United States for Edward Comenout in 1926.

Pursuant to a determination that Anna Comenout Harris and Edward Comenout were found to be fully competent and capable of managing their own affairs, an Order Removing Restrictions on a portion of the subject property was granted by the Acting Commissioner, in 1950-51, The Order contains a notation as follows: "TAX EXEMPT: The entire tract originally was .38 acre and after they sold .22 acre, it left them .16 acre." The remaining portion, held in a restricted status (which includes an easement for a highway) is a pie-shaped parcel containing 1.78 acres. The title is currently vested in Edward Comenout, Jr., and Anna Jack Comenout as to an undivided 1/2 interest each, subject to restrictions against encumbrance and alienation. However, pursuant to Probate No. IP SA 314N 91, dated March 18, 1993, Anna Jack Comenout's heirs were determined to be as follows:

HEIR	RELATION	INTEREST
Edward Comenout, Jr.	Son	3/27
Robert Comenout	Son	3/27
Dorothy Harris Steward	Daughter	3/27
Donald Harris	Son	3/27
Diane Harris	Daughter	3/27
Jack Harris	Son	3/27
James Harris	Son	3/27
Donald Harris Estate	Son	3/27
Carol Ann Harris	Granddaughter	1/27
Fluornoy Harris	Grandson	1/27
Vernon Harris	Grandson	1/27

The continued use of the premises by Edward and/or Robert Comenout, to the exclusion of the other heirs will surely be another issue involving the subject property. This situation, however, could also provide a solution as to the use, compliance, enforcement, etc., if a leasehold emanates among the ownership. That is, unless the question we pose as to restrictive use for a home is supportable by your review, findings, etc.

We feel and suggest that the authorization to expend trust funds in 1976 to purchase the parcel, subject to restrictions against encumbrance and alienation, was also restrictive as to use, particularly since this parcel was off-reservation and some distance from the individual's Tribe and reservation. (We suggest that this approach was consistent with BIA "policy" regarding such acquisitions during this period.)

Should you have any questions or require additional information regarding this matter, call Jim Wolf at 231-6714.